

OSHA's Proposed Emergency Response Rule

Summary of Advocacy's Comments

“Significant Alternatives” Under the Regulatory Flexibility Act

1. Achieves the Statutory Objectives (Here the OSH Act)
2. Is Feasible
3. Minimizes Costs to Small Entities
 - Agencies never asked to violate their statutory obligations
 - All OSHA RFA alternatives must meet OSH Act requirements
 - OSHA – Significant risk and technologically and economically feasible

Significant Risk of Material Harm

- OSHA should only regulate risks that rise to the level of “significant”
- Some of the provision extends to risks that are not significant – paperwork and reporting, training, vehicle maintenance
- OSHA should remove all elements that exceed significant risk

Technological Feasibility

- OSHA only looked at equipment and technology, not programs, processes, or procedures
- There is no doubt the equipment and technology exists
- It is the programs, processes, or procedures that are the most problematic
- Planning and paperwork, training and medical screening infrastructure, vehicle maintenance
- OSHA should develop a standard that is flexible and scalable and avoids unwarranted disruptions

Economic Feasibility

- OSHA standard is really broad – will not imperil the existence of the industry or cause massive economic dislocations
- Standard not appropriate for Emergency Response, as any disruptions in Emergency Response would be intolerable to the public
- Cost estimates understated
- Ability to fund activities is limited – fundraising and tax limits
- OSHA should ensure small entities can comply given existing and realistic revenue assumptions

Incorporation By Reference

- There are very few controls on the ability of federal agencies to incorporate by reference - “materials reasonably available to the public” and acceptable to Federal Register
- OSHA proposed to IBR 22 NFPA and other standards – Gold standard, make voluntary standards mandatory
- Consensus of the people and organizations who participate – lack small entity input
- Expensive, lengthy, and complex – read only copies are not helpful
- OSHA should reconsider the proposed IBR and include necessary provisions in the rule

Volunteer and Remote Rural Responders

- Small rural and volunteer responders would be most impacted
- OSHA jurisdiction over volunteers remains problematic
- Other factors, such as insurance and liability, may compel compliance
- OSHA should presume all will have to comply
- New OSHA release on volunteers

OSHA Should Reassess the Proposed Rule Before Proceeding

- Advocacy's comments based on extensive outreach to small entities, NACOSH subcommittee, SBREFA Panel, and small entity Roundtables
- Proposed rule may be appropriate for large, urban emergency responders, but would disproportionately burden small, rural, and volunteer emergency responders
- OSHA should reengage the regulated community before proceeding – stakeholder outreach, formal negotiated rulemaking